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NOS. 143 AND 576

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

THE BALTIMORE AND OHIO R. CO., *et al.*, *Appellants*,
v.
THE ATCHISON, TOPEKA AND SANTA FE RY. CO., *et al.*, *Appellees*. — No. 143

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Appellants*,
v.
THE ATCHISON, TOPEKA AND SANTA FE RY. CO., *et al.*, *Appellees*. — No. 576

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MEMORANDUM SUGGESTING THAT THE CAUSE IN NO. 143 IS MOOT AND THAT THE CAUSE IN NO. 576 IS PARTIALLY MOOT

Appellees listed in Appendix A hereto file this memorandum to advise the Court of facts which render the cause in No. 143 wholly moot and the cause in No. 576 partially moot.

These cases, together with No. 159 also now pending in this Court, are appeals from a Judgment of the United States District Court for the Southern District of Cali-

fornia setting aside orders of the Interstate Commerce Commission in its Docket No. 31503 et al, dated March 21, 1963, and December 31, 1963. These Commission orders prescribed two new and separate bases for dividing joint rates on transcontinental freight traffic. One basis, set forth in Appendices B and B-1 of the Commission's orders, prescribed the divisions the railroads shall receive for services performed east and west of the primary dividing points (e.g., Chicago, Peoria, St. Louis). The other basis, set forth in Appendices C and C-1 of those orders, prescribed divisions as between western railroads for services performed within the West. The general effect of the new divisions would have been substantially to increase the revenues of the Eastern railroads and most of the Midwestern railroads at the expense of the Mountain-Pacific railroads.[1]

The prescribed changes in divisions would have become effective on July 1, 1963, but the district court entered interlocutory injunctions restraining the operation of the Commission's orders subject to conditions protecting the interests of the Eastern and Midwestern railroads in the event the orders were eventually upheld. Subsequently, the district court entered its judgment setting aside the Commission's orders and remanding the cause to the Commission for further proceedings. These appeals followed. No. 143 is an appeal by the Eastern railroads whose interests are affected by the judgment of the district court insofar as it set aside the parts of the Commission's orders increasing the divisions of railroads operating in the East. No. 159 is an appeal by Midwestern railroads whose in-

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[1] Two Midwestern railroads, the St. Louis-San Francisco Railway and the Missouri-Kansas-Texas Railroad, who would also have suffered revenue losses under the Commission's orders, aligned themselves with the Mountain-Pacific railroads.

terests are affected by the judgment of the district court insofar as it set aside the parts of the Commission's orders increasing the divisions of railroads operating in the Midwest. No. 576 is an appeal by the United States and the Interstate Commerce Commission challenging the district court's judgment in its entirety and defending the lawfulness of the increases ordered by the Commission for both the Eastern and the Midwestern railroads.

After these appeals were docketed in this Court, all railroad appellees and all of the Eastern railroad appellants in No. 143 became parties to agreements which completely disposed of the controversy between these parties.[2] The agreements provide new divisions on transcontinental traffic generally higher for the Eastern railroads than those previously in existence but somewhat lower than those prescribed by the Commission. Under the agreements, these new divisions became effective as of September 1, 1965, and all parties to the agreement expressly waived all rights which they may have for retroactive payments under the conditions set forth in the interlocutory injunctions entered by the district court.

On October 20, 1965, the Mountain-Pacific and Eastern railroads filed a joint petition before the Interstate Commerce Commission, attaching their settlement agreement and requesting that the Commission vacate its orders in Docket No. 31503 et al, insofar as those orders prescribed divisions covered by that agreement. By order of January

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[2] The principal agreement was reached between all appellee railroads and all Eastern railroads except the Chicago & Eastern Illinois Railroad Company on September 29, 1965. (This agreement is attached hereto as Appendix B.) An agreement substantially adopting the earlier agreement was made between the appellee railroads and the Chicago & Eastern Illinois on November 19, 1965. (This agreement is attached hereto as Appendix C.)

7, 1966, the Commission granted this petition and vacated its previous orders in the respects requested.[3]

By reason of the settlement agreement between the appellee railroads and the Eastern railroad appellants in No. 143, together with the order of the Commission dated January 7, 1966, vacating in part the Commission's orders which are the subject of the appeals in this Court, the controversy between the railroads which is the subject of the appeal in No. 143 is moot. For the same reason, a part of the controversy between the appellee railroads and the Government in No. 576 (the part relating to the lawfulness of the Commission's orders prescribing divisions as between appellant Eastern and appellee railroads) is also moot.

In *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 39-40 (1950), the Court stated:

> "The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss [citing numerous cases]. That was said in *Duke Power Co.* v. *Greenwood County*, 299 U.S. 259, 267, to be 'the duty of the appellate court.'"

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[3] The Commission's order of January 7, 1966, is attached hereto as Appendix D. That order vacates Appendices B and B-1 of the Commission's previous orders in all respects necessary to allow appellees and appellant Eastern railroads to continue in effect their agreement to apply divisions in lieu of those previously prescribed by the Commission. The order of vacation leaves the divisional percentages prescribed for the Eastern railroads in effect insofar as, and only insofar as, those percentages (1) apply to or from stations in Mountain-Pacific territory on the Chicago, Milwaukee, St. Paul & Pacific Railroad (a member of the Midwestern group of railroads) and (2) constitute a predicate for determination of the subdivisions to be received by railroads operating in the Midwest.

As illustrated in the cases collected by the Court in *Munsingwear,* the procedure to be followed where an action for judicial review of an administrative order has become moot is for this Court to enter an order vacating the judgment of the court below and remanding the case to that court with directions to dismiss the complaint as moot. *S.E.C.* v. *Philadelphia Co.,* 337 U.S. 901 (1949); *S.E.C.* v. *Long Island Lighting Co.,* 325 U.S. 833 (1945).

WHEREFORE, it is requested that this Court enter an order in Nos. 143 and 576 vacating the judgment of the district court and remanding the cases to that court, with directions to dismiss the complaints as moot, insofar as the judgment below and the complaints are directed to portions of orders of the Interstate Commerce Commission which have been vacated by that Commission in its order dated January 7, 1966.

Respectfully submitted,

DOUGLAS F. SMITH
HOWARD J. TRIENENS
GEORGE L. SAUNDERS, JR.,
Sidley, Austin, Burgess & Smith
11 South La Salle Street
Chicago, Illinois 60603

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Attorneys for Appellees Atchison, Topeka & Santa Fe Ry. Co., et al., Frisco and Katy (Listed in Appendix A)

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LAWRENCE W. HOBBS
HOWARD E. ROOS
HOWARD V. RHEDIN
L. E. TORINUS, JR.
E. L. VAN DELLEN

Of Counsel

February 15, 1966

Appendix A

List of Appellees on whose Behalf this Memorandum Suggesting Mootness is filed

The Atchison, Topeka and Santa Fe Railway Company
Beaver, Meade and Englewood Railroad Company
Butte, Anaconda & Pacific Railway Company
Camas Prairie Railroad Company
Central California Traction Company
Colorado and Wyoming Railway Company
Great Northern Railway Company
Gulf, Colorado and Santa Fe Railway Company
Longview, Portland & Northern Railway Company
Los Angeles Junction Railway Company
Missouri-Kansas-Texas Railroad Company
Modesta and Empire Traction Company
Nevada Northern Railway Company
Northern Pacific Railway Company
Oregon, California & Eastern Railway Company
Oregon Electric Railway Company
Oregon Pacific and Eastern Railway Company
Oregon Trunk Railway
Pacific Coast R.R. Co.
Panhandle and Santa Fe Railway Company
Portland Traction Company
Quanah, Acme & Pacific Railway Company
Sacramento Northern Railway Company
Salt Lake, Garfield and Western Railway Company
Spokane International Railroad Company
Spokane, Portland and Seattle Railway Company
St. Louis-San Francisco Railway Company
Stockton Terminal and Eastern Railroad
Sunset Railway Company
Tidewater Southern Railway Company
Tooele Valley Railway Company
Union Pacific Railroad Company
Utah Railway Company
Walla Walla Valley Railway Company
The Western Pacific Railroad Company
Yakima Valley Transportation Co.

Appendix B

AGREEMENT

THIS AGREEMENT, made as of the 29th day of September, 1965, by and between the common carriers by railroad named in Appendix 1 attached hereto and made a part hereof, hereinafter referred to as Eastern parties, and the common carriers by railroad named in Appendix 2 attached hereto and made a part hereof, hereinafter referred to as Western parties,

WITNESSETH:

WHEREAS, the Eastern parties or their predecessors in interest and the Western parties and other Western railroads were variously complainants, defendants, cross-complainants or cross-defendants in proceedings before the Interstate Commerce Commission entitled Akron, Canton & Youngstown Railroad Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al. No. 31503 et al., herein termed "Docket 31503 proceedings", which among others brought into issue the primary divisions of joint interterritorial rates on freight moving between stations on Eastern railroads in Official territory and stations on railroads in Mountain-Pacific territory (consisting of Transcontinental and Intermountain territories) and also stations in eastern New Mexico as more fully described in its initial report and order therein of March 21, 1963 (321 I.C.C. 17), its order of June 20, 1963, and its supplemental report and accompanying order of December 31, 1963 (322 I.C.C. 491);

WHEREAS, the Commission in said Docket 31503 proceedings prescribed, among others, primary divisions on traffic between Official Territory, on the one hand, and Transcontinental territory and Montana (part of Intermountain territory), on the other, in its order of March 21, 1963, made to become effective July 1, 1963, and in its order of December 31, 1963, made to become effective March 30, 1964;

WHEREAS, Western parties (and certain other western railroads) were plaintiffs or intervening plaintiffs in the action against the United States of America and the Interstate Commerce Commission as defendants in the United States District Court for the Southern District of California, Central Division, docketed as Civil Action No. 63-745 EC, to set aside, enjoin, annul, and suspend the orders of the Commission described above, in which action certain Eastern railroads and certain Midwestern railroads intervened as defendants, and wherein the said Court entered its judgments of interlocutory injunction on August 6, 1963, and March 24, 1964, respectively, enjoining pendente lite the said orders of the Commission subject to specified conditions, including conditions that if the Commission's orders were sustained they should be considered as effective on and after July 1, 1963, and March 30, 1964, respectively;

WHEREAS, the said District Court on February 17, 1965, made its judgment setting aside said orders and remanding the cause to the Commission for further proceedings, and contemporaneously made and entered its Order Staying Judgment for 60 days from said date, and, if within that period a notice or notices of appeal to the Supreme Court were filed, until final disposition or termination of such appeal or appeals; and providing that during said period or periods the judgments for interlocutory injunction shall continue in full force and effect;

WHEREAS, within the said 60-day period the intervening defendant Eastern railroads, the intervening defendant Midwestern railroads, and the United States of America and Interstate Commerce Commission as defendants before the District Court, filed their several notices of appeal to the Supreme Court of the United States, and thereafter docketed their several appeals in the Supreme Court where they are now pending as Nos. 143, 159, and 576, October Term, 1965, respectively;

AND WHEREAS, without awaiting the final outcome of the pending litigation, the parties desire, so far as they can, to compromise, settle, and dispose of such Docket 31503 litigation before the courts and the Commission, the divisions disputes involved therein, and certain related disputes, as between the parties to this agreement;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

Section 1. This agreement applies (subject to exceptions in Section 3 hereof) to the division of all joint interterritorial freight rates, including those made by an aggregate-of-intermediate rule, between stations on lines of Eastern parties in Official territory, on the one hand, and stations in Mountain-Pacific territory and stations in eastern New Mexico other than those on the Texas-New Mexico Railway, on the other hand, in which the Western parties participate as either originating, terminating, or intermediate carriers, even though a portion of the line-haul service is rendered by a common carrier by railroad that is not a party to this agreement and has not concurred in the divisions provided herein. The Eastern parties shall have the right as against the Western parties to receive revenues based upon the primary divisions herein agreed to, regardless of the nonconcurrence of any Western railroad not party to this agreement.

Section 2. The divisions of the joint rates described in Section 1 hereof shall (subject to exceptions in Sections 3 and 4 hereof) be determined as follows:

(a) For traffic moving between points in Official territory, on the one hand, and points in Transcontinental territory and points in that part of Intermountain territory comprising points in Montana on and west of a line from

Havre, through Great Falls, Helena (including East Helena), and Butte, Montana, on the other hand, via Chicago group junctions; Peoria and Peoria group junctions; East St. Louis and East St. Louis group junctions (but not including St. Louis, Mo.); Kewaunee, Manitowoc, and Milwaukee, Wis., and Mackinaw City, Menonimee, and Manistique, Mich.; and other gateways grouped with one of the aforesaid gateways in TCFB Division Circular No. 62 series, there shall be six territorial groups in Official territory, as set forth in Appendix 3 hereto, and one Western group. The divisions shall be the group-to-group percents set forth in Appendix 4 hereto.

(b) For traffic between Official territory, on the one hand, and the balance of Intermountain territory and stations in eastern New Mexico other than those of the Texas-New Mexico Railway, on the other hand, the divisions shall be the point-to-point percentages set forth in Section 6 of WTL Division Sheet 500-A based on short line mileages east and west of the primary divisional gateways named in said division sheet except that on traffic to or from points in New England territory one and one-half percentage points shall be deducted from the western division and added to the eastern division.

Section 3. This agreement shall not apply to:

(a) Traffic which originates or terminates within the switching district of the dividing point and is there interchanged between an eastern carrier and a western carrier.

(b) Charges and arrangements relating to intermediate service in effecting interchange between an eastern carrier and a western carrier.

(c) Traffic which originates or terminates at points on the narrow gauge lines of the Denver & Rio Grande Western Railroad.

Section 4(a). Before the divisions set forth in Appendix 4 are applied to trailer-on-flat-car rates the terminal deductions provided by divisional agreements relating to such rates shall be deducted before prorating and added to the share of the railroad or railroads to which they accrue.

Section 4(b). Published arbitraries in rate tariffs which are added to the base rate to produce a through rate are to be first deducted before applying the divisions shown in Appendix 4 of this agreement. Such arbitraries are to accrue to the lines serving such arbitrary territory.

Section 5. The divisions herein provided shall be applied beginning with the shipments reported in the September 1965 interline accounts (subject to report in accordance with Freight Mandatory Accounting Rule 145 on October 18, 1965) and interline settlements on the basis thereof shall be made currently, without deferment or delay and in accordance with Freight Mandatory Accounting Rules, except that said divisions shall not apply on transited traffic which was waybilled out of its origin point prior to September 1, 1965.

Section 6(a). Except as the divisions established hereby are to become effective as provided in Section 5 hereof, the parties hereby agree that no retroactive effect will be given between themselves with respect to either the divisions established herein or any divisions which have been prescribed by the Commission in the Docket 31503 proceedings between the Eastern parties hereto and the Western parties. In this regard, the parties hereto specifically waive any and all rights which they may have for repayments by other parties hereto under the conditions set forth in paragraph 2 of the judgment for interlocutory injunction and the judgment for interlocutory injunction on supplemental complaint and on amended complaint, referred to in the order staying judgment entered by the United States

District Court, Southern District of California, Central Division, on February 18, 1965, in said No. 63-745 EC.

Section 6(b). All outstanding collateral divisions disputes (as described in Freight Mandatory Accounting Rule 174) between the eastern parties and the western parties relating to joint rates between the territories covered by this agreement shall be settled on a status quo basis, i.e., that the respective carriers keep all monies they have retained in their accounts and give up all claims they have against each other. As between the parties the six general outstanding disputes (listed in Appendix 5) between the eastern parties and the western parties are cancelled and all amounts due from any and all interim division agreements are cancelled.

Section 7. The parties hereto agree to cooperate in taking all appropriate steps before the Commission and the Courts to terminate as between themselves all litigation before the Commission and the Courts respecting the divisions involved in the Docket 31503 proceedings. To this end, the parties will first file a joint petition with the Commission asking it to vacate or modify its said orders in the Docket 31503 proceedings, insofar as they fix primary divisions between the parties hereto, so as to permit the parties to establish and maintain the primary divisions herein provided, and to dismiss all complaints and cross-complaints in such proceedings insofar as they relate to divisions between the parties hereto.

Section 8. Eastern parties will promptly prepare and submit to Western parties for joint publication a Division Sheet reflecting the basis of divisions herein provided.

Section 9. Eastern and Western railroads involved in the Docket 31503 proceedings may become parties hereto by executing a counterpart in the form set forth below, on or before October 31, 1965.

COUNTERPART

....., a corporation organized and existing under the laws of ....., having received and being duly familiar with a counterpart of that certain agreement dated September 29 ,1965, between Eastern railroads and Western railroads relative to the divisions of joint interterritorial freight rates between points on the lines of Eastern parties in Official territory, on the one hand, and points in Mountain-Pacific territory (consisting of Transcontinental and Intermountain territories) and points in eastern New Mexico other than those on the Texas-New Mexico Railway, on the other hand, hereby executes and becomes a party to said agreement as of its said date.

/s/ .....

By.....(Title)

IN WITNESS WHEREOF, this agreement has been executed as of the 29th day of September, 1965, by the following carriers:

Eastern Parties:

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By.....

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By.....

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By.....

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By.....

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By.....

Western Parties:

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By.....

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By.....

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By.....

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By.....

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By.....

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By.....

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By.....

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Appendix I (Revised)

EASTERN PARTIES

Name of Carrier	*Name and Title of Officer Who Executed Counterpart*
The Akron, Canton & Youngstown Railroad Company	W. E. Henry Vice President—Traffic
Algers, Winslow and Western Railway Company	John W. Scales Traffic Manager
The Ann Arbor Railroad Company	E. A. Walther Vice President—Traffic
Arcade and Attica Railroad Corporation	R. I. Cartwright, President
Aroostook Valley Railroad Company	H. E. Powell, Vice-President
Atlantic Coast Line Railroad Company	Philip J. Lee, Vice-President
The Baltimore and Annapolis Railroad Company	R. Edwin Disharoon, President
Baltimore and Eastern Railroad Company	A. J. Greenough, President
The Baltimore and Ohio Railroad Company	Charles J. Henry, Jr. Vice President
Bangor and Aroostook Railroad Company	L. W. Wentworth General Freight Traffic Manager
Bath and Hammondsport Railroad Company	N. R. Emilson Executive Vice President
Beech Mountain Railroad Company	Charles O. Morris, President
Belfast and Moosehead Lake Railroad Company	Wilfred I. Hall General Manager and Auditor
Bellefonte Central Railroad Company	G. E. McClellan Executive Vice President
Bessemer and Lake Erie Railroad Company	G. A. Squibb Vice President—Marketing
Boston and Maine Corporation	P. J. Mullaney, Vice President
Boyne City Railroad Company	A. J. Sevener, Auditor
Brooklyn Eastern District Terminal	M. M. McClelland President and General Manager
Bush Terminal Railroad Co.	John C. Hilly, President
Cadillac & Lake City Railway Company, Inc.	H. H. Noble President and General Manager
Cambria and Indiana Railroad Company	C. L. Doroff, Vice President

Name of Carrier	*Name and Title of Officer Who Executed Counterpart*
Canadian National Railways (Lines West Fort William, Ont., Armstrong, Ont., and East thereof)	G. R. Johnston, Assistant Vice-President—Freight Sales
Canadian Pacific Railway Company (Stations in Maine and Vermont)	J. M. Roberts Vice-President—Traffic
Central Indiana Railway Company	C. V. Sheriff Vice President—Traffic
The Central Railroad Company of New Jersey	J. L. Barngrove, Jr. Vice President—Freight Traffic
Central Vermont Railway, Inc.	C. A. Berube, Vice-President
The Chesapeake and Ohio Railway Company	J. E. Doyle, Vice President
Chesapeake Western Railway	H. H. Pevler, President
Chestnut Ridge Railway Company	S. A. Borger, President
Chicago & Illinois Midland Railway Company	J. E. Dare, President
Chicago South Shore and South Bend Railroad	F. H. Hiskes General Traffic Manager
The Cincinnati, New Orleans and Texas Pacific Railway Company	R. S. Hamilton Vice President
Claremont and Concord Railway Company, Inc.	K. H. Lemnah Vice President—Traffic
The Clarendon and Pittsford Railroad Company	E. W. Olson President
Coudersport & Port Allegany Railroad Company	Morris H. Snerson Vice President & Treasurer
The Dansville and Mount Morris Railroad Company	F. A. Hart President
The Delaware & Hudson Railroad Corporation	J. P. Hiltz, Jr. President and General Manager
The Detroit and Toledo Shore Line Railroad Company	F. R. Bette Traffic Manager
Detroit, Toledo and Ironton Railroad Company	E. A. Walther Vice President—Traffic
East Jersey Railroad and Terminal Company	T. P. Connelly Vice President
East Washington Railway Company	J. Mayo Rector, President
Erie-Lackawanna Railroad Company	H. C. Schmidt, Vice President
Ferdinand Railroad Company	S. A. Schreiner President and General Manager
Fonda, Johnstown and Gloversville Railroad Company	Howard C. Miller Vice President & Treasurer
Fore River Railroad Corporation	Clinton D. Arnot, President

Name of Carrier	*Name and Title of Officer Who Executed Counterpart*
Genesee and Wyoming Railroad Company	John N. Kiefer, Jr., Vice President and General Manager
The Grafton and Upton Railroad Company	Paul Roberts, Treasurer
Grand Trunk Railway System (Lines in the United States, East of the West Bank of the Detroit and St. Clair Rivers), comprising the following carriers: Canadian National Railway Company	George R. Johnston, Assistant Vice President—Freight Sales
Grand Trunk Western Railroad Company	L. B. Freeman General Traffic Manager
Green Mountain Railroad Corporation	R. W. Nimke, General Freight Agt.
Greenwich & Johnsonville Railway Company	J. P. Hiltz, Jr. President and General Manager
Hoboken Shore Railroad	J. H. Lerbs, President and General Manager, By J. M. Craig, Assistant Manager
Hoosac Tunnel and Wilmington Railroad Company	K. H. Lemnah Vice President—Traffic
Illinois Terminal Railroad Company	Wm. A. Nelson, Jr. Vice President—Traffic
Indiana Harbor Belt Railroad Company	R. N. Cramer, Asst. Vice President
The Ironton Railroad Company (Lehigh Valley Railroad Company and Reading Company, Lessees).	R. A. Brobst, General Agent
The Kanawha Central Railway Company	F. R. Summerfield, Treasurer
Lackawanna and Wyoming Valley Railway Company	M. G. McInnes, President
Lake Erie, Franklin & Clarion Railroad Company	W. R. Glenn, Vice President—Traffic & Accounting
The Lehigh and Hudson River Railway Company	H. W. Quinlan President and General Manager
Lehigh and New England Railway Company	J. L. Barngrove, Jr. Vice President—Freight Traffic
Lehigh Valley Railroad Company	G. R. Wallace Vice President—Traffic
Livonia, Avon & Lakeville Railroad Corporation	R. G. Nugent, General Manager

Name of Carrier	*Name and Title of Officer Who Executed Counterpart*
The Long Island Rail Road Company	M. C. Marquet General Manager—Freight
The Lorain & West Virginia Railway Company	H. C. Wyatt, President
Louisville and Nashville Railroad Company	W. G. Whitsett Vice President—Traffic
The Lowville and Beaver River Railroad Company	L. K. Virkler, Superintendent
Ludington and Northern Railway Co.	Donald C. Englund Traffic Manager
Maine Central Railroad Company	R. C. Merrow, Freight Traffic Manager
Maryland and Pennsylvania Railroad Company	C. L. Amrein, Vice President and General Manager
Middle Fork Railroad Company	Howard D. Loudin, Vice President
Middletown and New Jersey Railway Company Inc.	Lloyd R. Deubler Vice President-General Manager
Midway Railroad Company	J. L. McNealey, President
Monon Railroad	William C. Coleman, Jr., Vice President Traffic and Marketing
The Monongahela Railway Company	Hewitt Biaett, President
Montour Railroad Company	G. M. Smith, President
Montpelier and Barre Railroad Company	K. H. Lemnah, Vice-President —Traffic
Morehead and North Fork Railroad Company	Roy H. Cassity, President and General Manager
Morristown & Erie Railroad Company	Andrew L. Cobb, III, President
Moshassuck Valley Railroad Company	Fred A. Kosierowski, Controller
Mount Hope Mineral Railroad Company	J. L. Barngrove, Jr., Vice President—Freight Traffic
The Narragansett Pier Railroad Co., Inc.	J. Anthony Hannold, President
The New Jersey and New York Railroad Company	Horace Banta, Trustee
New Jersey, Indiana & Illinois Railroad Company	R. N. Woodall, Vice President Traffic Manager
The New York and Long Branch Railroad Company	P. M. Shoemaker, President
The New York Central Railroad Company	James R. Sullivan, Vice-President —Marketing
The New York Connecting Rail Road Company	A. J. Greenough, President

Name of Carrier	*Name and Title of Officer Who Executed Counterpart*
New York Dock Railway	Edward Mosca, Vice-President
The New York, New Haven and Hartford Railroad Company, (Richard Joyce Smith, William J. Kirk and Harry W. Dorigan, Trustees)	C. E. Ragland, Vice-President —Freight Traffic
New York, Susquehanna and Western Railroad Company	T. B. Dwyer, Vice President —Traffic
Norfolk and Western Railway Company	R. N. Woodall, Vice President —Traffic
Norfolk, Franklin and Danville Railway Company	H. H. Pevler, President
Norfolk Southern Railway Company	Henry Oetjen, President
Northampton and Bath Railroad Company	F. W. Okie, President
Norwood & St. Lawrence Railroad Company.	M. J. Walsh, Jr., President
Pennsylvania and Atlantic Railroad Co.	John V. Francis, President
The Union Transportation Co., Lessees	
The Pennsylvania Railroad Company	H. W. Large, Vice President —Traffic
Pennsylvania-Reading Seashore Lines	David E. Smucker, Vice President
The Pittsburgh and Lake Erie Railroad Company	James R. Sullivan, Vice President —Marketing
The Pittsburg & Shawmut Railroad Company	W. E. Buhite, President
Pittsburgh, Chartiers & Youghiogheny Railway Company	C. D. Buford, President
Port Huron and Detroit Railroad Company	J. F. Levin, Vice President —Sales
Quebec Central Railway Company	G. E. Benoit, Vice President
Rahway Valley Company	George A. Clark, President
Raritan River Rail Road Company	P. M. Shoemaker, President
Reading Company	H. M. Mulloy, Vice President
Richmond, Fredericksburg and Potomac Railroad Company	W. E. Turner, Vice President— Traffic & Industrial Development
Rosslyn Connecting Railroad Company	J. D. Morris, President
St. Johnsbury and Lamoille County Railroad	L. A. Putnam, President

Name of Carrier	*Name and Title of Officer Who Executed Counterpart*
Seaboard Air Line Railroad Company	J. P. Derham, Jr., Vice President
Skaneateles Short Line Railroad Corporation	T. Dean Howland, President
South Brooklyn Railway Company	S. Brandes, Vice President
Southern Indiana Railway, Inc.	W. L. Elder, President
Southern New York Railway Incorporated	Morris H. Snerson, Secretary
Southern Railway Company	R. S. Hamilton, Vice President
Springfield Terminal Railway Company	W. H. Holland, President
The Staten Island Rapid Transit Railway Company	Charles J. Henry, Jr., Vice President
Stewartstown Railroad Company	J. H. Ebaugh, Secretary
The Toledo, Angola & Western Railway Company	Worth Loomis, Vice President & Secretary
Toledo, Peoria & Western Railroad Company	Mallory J. Craig, Vice President —Traffic
Trenton-Princeton Traction Company	H. M. Mulloy, Vice President
Twin Branch Railroad Company	W. J. Rose, Vice-President & Secretary
Vermont Railway, Inc.	S. A. Clifford, Vice President
Virginia Blue Ridge Railway	R. C. Coco, Vice President
Virginia Central Railway	Geo. D. Williams, President
Wabash Railroad Company (To the extent of its interest therein)	H. W. Large, Vice President
Warwick Railway	Oscar J. Greene, President
Washington and Old Dominion Railroad	Gregory S. DeVine, President
Waynesburg and Washington Railroad Company	G. M. Smith, President
Wellsville, Addison & Galeton Railroad Corporation	Morris H. Snerson, Vice President & Treasurer
Western Allegheny Railroad Company	P. W. Nemitz, General Manager
Western Maryland Railway Company	C. R. Zarfoss, Vice President
West Pittston-Exeter Railroad Company	D. J. Connell, Vice President
West Virginia Northern Railroad Company	J. D. Everly, Vice President-General Manager
Wharton and Northern Railroad Company	J. L. Barngrove, Jr., Vice President—Freight Traffic

Name of Carrier	*Name and Title of Officer Who Executed Counterpart*
Winchester and Western Railroad Company	George C. Beck, President
The Winfield Railroad Company	R. J. Janer, General Traffic Mgr.
Winifrede Railroad Company	J. R. Thomas, II, Secretary-Treasurer
Youngstown & Southern Railway Company	G. M. Smith, President

Revised Appendix II

WESTERN PARTIES

Name of Carrier	*Name and Title of Officer Who Executed Counterpart*
Amador Central Railroad Company	Howard J. Trienens, Attorney
The Arcata and Mad River Rail Road Company	Howard J. Trienens, Attorney
The Atchison Topeka and Santa Fe Railway Company	T. M. Caiazza, Vice President
Butte, Anaconda & Pacific Railway Company	Howard J. Trienens, Attorney
California Western Railroad	Howard J. Trienens, Attorney
Camas Prairie Railroad Company	Howard J. Trienens, Attorney
Camino, Placerville & Lake Tahoe Railroad Company	Howard J. Trienens, Attorney
Central California Traction Company	Howard J. Trienens, Attorney
Chicago, Burlington & Quincy Railroad Company	G. R. Glover, Vice President
The Colorado and Southern Railway Company	G. R. Glover, Vice President —Traffic
The Colorado and Wyoming Railway Company	Howard J. Trienens, Attorney
The Denver and Rio Grande Western Railroad Company	R. K. Bradford, Senior Vice President
Fort Worth and Denver Railway Company	G. R. Glover, Vice President —Traffic
Great Northern Railway Company	C. E. Finley, Vice President
Gulf, Colorado and Santa Fe Railway Company	Howard J. Trienens, Attorney
Holton Inter-Urban Railway	Howard J. Trienens, Attorney
Inter-California Railway Company	Howard J. Trienens, Attorney

Name of Carrier	*Name and Title of Officer Who Executed Counterpart*
Klamath Northern Railway Company	Howard J. Trienens, Attorney
Longview, Portland & Northern Railway Company	Howard J. Trienens, Attorney
Los Angeles Junction Railway Company	Howard J. Trienens, Attorney
McCloud River Railway Company	Howard J. Trienens, Attorney
Magma Arizona Railroad Company	Howard J. Trienens, Attorney
Missouri-Kansas-Texas Railway Company	F. J. Heiling, Vice President
Modesto and Empire Traction Company	Howard J. Trienens, Attorney
Nevada Northern Railway Company	Howard J. Trienens, Attorney
Nacozari Rail Road Company	Howard J. Trienens, Attorney
Northern Pacific Railway Company	E. M. Stevenson, Vice President —Traffic
Northwestern Pacific Railroad Company	Howard J. Trienens, Attorney
Oregon, California & Eastern Railway Company	Howard J. Trienens, Attorney
Oregon Electric Railway Company	Howard J. Trienens, Attorney
Oregon Pacific and Eastern Railway Company	Howard J. Trienens, Attorney
Oregon Trunk Railway	Howard J. Trienens, Attorney
Pacific Coast R.R. Co.	Howard J. Trienens, Attorney
Pacific Electric Railway Company	Howard J. Trienens, Attorney
Panhandle and Santa Fe Railway	Howard J. Trienens, Attorney
Petaluma and Santa Rosa Railroad Company	Howard J. Trienens, Attorney
Portland Traction Company	Howard J. Trienens, Attorney
Sacramento Northern Railway	Howard J. Trienens, Attorney
St. Louis-San Francisco Railway Company	Edward J. Kreyling, Jr., Vice President, Traffic and Industrial Development
St. Louis Southwestern Railway Company	Howard J. Trienens, Attorney
Salt Lake, Garfield and Western Railway Company	Howard J. Trienens, Attorney
San Diego & Arizona Eastern Railway Company	Howard J. Trienens, Attorney
Santa Maria Valley Railway Company	Howard J. Trienens, Attorney
Sierra Railroad Company	Howard J. Trienens, Attorney
Southern Pacific Company	W. G. Peoples, Vice President

Name of Carrier	*Name and Title of Officer Who Executed Counterpart*
Spokane International Railroad Company	Howard J. Trienens, Attorney
Spokane, Portland and Seattle Railway Company	Howard J. Trienens, Attorney
Stockton Terminal and Eastern Railroad	Howard J. Trienens, Attorney
Sunset Railway Company	Howard J. Trienens, Attorney
The Texas Mexican Railway Company	W. L. Webber, Traffic Manager
Tidewater Southern Railway Company	Howard J. Trienens, Attorney
Tijuana and Tecate Railway Company	Howard J. Trienens, Attorney
Toledo, Peoria & Western Railway Company	Mallory J. Craig, Vice President —Traffic
Tooele Valley Railway Company	Howard J. Trienens, Attorney
Trona Railway Company	Howard J. Trienens, Attorney
Tucson, Cornelia and Gila Bend Railroad Company	Howard J. Trienens, Attorney
Union Pacific Railroad Company	J. R. MacAnally, Vice President —Traffic
Utah Railway Company	Howard J. Trienens, Attorney
Ventura County Railway Company	Howard J. Trienens, Attorney
Visalia Electric Railroad Company	Howard J. Trienens, Attorney
Walla Walla Valley Railway Company	Howard J. Trienens, Attorney
The Western Pacific Railroad Company	Walter C. Brunberg, Vice President—Marketing
Yakima Valley Transportation Company	Howard J. Trienens, Attorney
Yreka Western Railroad Company	Howard J. Trienens, Attorney

Appendix 3

DESCRIPTION OF EASTERN GROUPS E-1 TO E-6, INCLUSIVE

EASTERN GROUP E-1

Group E-1 includes all points in New England-Trunk Line Seaboard territory taking Division Group E-1 as named in Section 2 of TEA-ER Division Sheet No. 510, including stations of the Erie-Lackawanna Railroad Company from Jersey City, N. J., to and including Suffern, Spring Valley, and Nyack, N. Y., and to Wanaque-Midvale, Dover and Gladstone, N. J.

EASTERN GROUP E-2

Group E-2 includes all points in Interior Trunk Line (Syracuse) territory taking Division Group E-2 as named in Section 2 of TEA-ER Division Sheet No. 510 (except Erie-Lackawanna Railroad stations included in Group E-1).

EASTERN GROUP E-3

Group E-3 includes all points in the Buffalo-Pittsburgh-Bessemer-Cleveland Groups taking Division Group E-3 as named in Section 2 of TEA-ER Division Sheet No. 510.

EASTERN GROUP E-4

Group E-4 includes all points in the Detroit-Indianapolis-Cincinnati Groups taking Division Group E-4 as named in Section 2 of TEA-ER Division Sheet No. 510.

EASTERN GROUP E-5

Group E-5 includes all stations in Illinois on lines of Eastern parties.

EASTERN GROUP E-6

Group E-6 includes Evansville, Terre Haute, and Vincennes, Ind.

Appendix 4

Eastern Divisional Percentages of Joint Rates Between the Western Group and Groups E-1 to E-6, inclusive, as Provided by Foregoing Agreement.

Primary Break-Points or Gateways

Eastern Groups	(1) Chicago	(2) Peoria	(3) East St. Louis
E-1	32.5%	36.0%	36.5%
E-2	26.5	30.0	30.5
E-3	19.5	23.0	23.0
E-4	15.5	19.0	19.0
E-5	10.0	10.0	10.0
E-6	14.0	14.0	14.0

(1) Includes Chicago group junctions and other junctions grouped therewith in TCFB Division Circular No. 62 series, including Kewaunee, Milwaukee, and Manitowoc, Wis., and Mackinaw City, Menominee, and Manistique, Mich.

(2) Includes Peoria group junctions and other Illinois junctions presently grouped therewith in TCFB Division Circular No. 62-B.

(3) Includes East St. Louis group junctions and other Illinois junctions presently grouped therewith in TCFB Division Circular No. 62-B, but not including St. Louis, Mo.

Appendix 5

Six disputes involve the different interpretation of various provisions of presently applicable division sheets, viz:

1. Minimum proportions east of Chicago, E. St. Louis and other Official Lines' gateways.
2. Divisions on Rough Lumber.
3. Deduction of 3¢ per 100 lbs. at New York piers on eastbound perishables and on citrus to New England.
4. Combination rated traffic.
5. Locals as maximum.
6. Maximum proportions west of Official Lines' gateways on import — export traffic moving through Pacific Coast ports.

Appendix C

AGREEMENT

THIS AGREEMENT, made this 19th day of November, 1965, by and between the Chicago & Eastern Illinois Railroad Company, hereinafter referred to as C&EI, and the Mountain-Pacific railroads, plaintiffs and intervening plaintiffs in Civil Action 63-745-EC, S.D. Calif., hereinafter referred to as Western parties,

WITNESSETH:

WHEREAS, Western parties and Eastern railroads other than the C&EI entered into an agreement dated September 29, 1965 (hereinafter referred to as the September 29 agreement); and

WHEREAS, the parties hereto adopt the recitals set forth in the September 29 agreement;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

Section A. The parties hereto adopt the provisions of Sections 1 through 7 of the September 29 agreement with the exception that traffic originating or terminating at stations of the C&EI on the C&EI line between and including South Holland, Illinois, and Danville, Illinois, shall be excluded from Eastern Group E-5 and included in Eastern Group E-6, as defined in Appendix 3 of the September 29 agreement. Subject to this exception, the C&EI will join the Divisions Sheet being prepared by Eastern railroads in accordance with Section 8 of the September 29 agreement.

Section B. With respect to transcontinental traffic originating or terminating on the C&EI in Chicago and the Chicago Switching District, on which traffic the C&EI par-

ticipates in the Midwestern portion of the transcontinental service as a carrier between Chicago and E. St. Louis, the division of the C&EI shall be 107 percent of the present merchandise percent, thereby changing the present 11 percent division to 11.8 percent.

Section C. In compliance with the provisions of Section 7 of the September 29 agreement, the C&EI shall notify the Interstate Commerce Commission forthwith that the C&EI withdraws its opposition to the "Petition for Vacation of Orders" filed by the Eastern and Mountain-Pacific railroads on October 20, 1965, and that the C&EI joins the said "Petition for Vacation of Orders" and requests the deletion of item (b) of the exceptions set forth in the prayer to that Petition. In further compliance with Section 7 of the September 29 agreement, the parties hereto shall join in petitions requesting that the Commission vacate any other outstanding orders affecting any of the divisions agreed to herein.

IN WITNESS WHEREOF, this Agreement has been executed as of the 19th day of November, 1965.

Chicago & Eastern Illinois Railroad Co.

By .....
By James H. Durkin, Attorney

Mountain-Pacific Railroads (plaintiffs and intervening plaintiffs Atchison, T. & S.F. Ry. Co. et al., Southern Pacific Co. et al, and Amador Central R. Co., et al., in Civil Action No. 63 C 745 EC, S.D. Calif.)

By .....
By Howard J. Trienens, Attorney

Appendix D

ORDER

SERVICE DATE
JANUARY 17, 1966

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 7th day of January, A.D. 1966.

No. 31503*

AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY ET AL.,

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

It appearing, That by reports and orders of March 21, 1963, 321 I.C.C. 17, (as clarified by order of June 20, 1963) and December 31, 1963, 322 I.C.C. 491, the Commission prescribed (1) in appendices B and B-1 thereof divisions of joint interterritorial rates on transcontinental traffic moving between official (or eastern) and transcontinental territories (including Montana), and (2) in appendices C and C-1 thereof (a) the midwestern subdivisions of the western primary divisions of interterritorial rates between

* This order also embraces Docket No. 31503 (Sub-No. 1), Ahnapee & Western Railway Company et al. v. Abilene & Southern Railway Company et al., No. 31503 (Sub-No. 2), Chicago, Burlington & Quincy Railroad Company et al. v. Abilene & Southern Railway Company et al., No. 31503 (Sub-No. 3), Chicago, Milwaukee, St. Paul & Pacific Railroad Company v. Same, No. 31503 (Sub-No. 4), Louisville & Nashville Railroad Company v. Akron, Canton & Youngstown Railroad Company, et al., and No. 31503 (Sub-No. 5), Cincinnati, New Orleans & Texas Pacific Railway Company v. Same.

official and transcontinental territories prescribed in appendices B and B-1 and (b) the primary divisions of joint intraterritorial rates on traffic moving between midwestern and mountain-Pacific territories, to become effective on July 1, 1963, and, as modified, on March 30, 1964, respectively.

It further appearing, That the western railroad petitioners herein thereafter filed an action in the United States District Court for the southern District of California, Central Division, docketed as Civil Action No. 63-745-EC, to set aside, enjoin, annul, and suspend the orders of the Commission described above and said court issued a restraining order on June 27, 1963, and judgments of interlocutory injunction on August 6, 1963, and March 24, 1964, respectively, enjoining *pendente lite* the said orders of the Commission, subject to specified conditions.

It further appearing, That the said District Court on February 17, 1965, made its judgment setting aside said orders and remanded the cause to the Commission for further proceedings, and contemporaneously made and entered its orders staying judgment for 60 days from said date, and, if within that period a notice or notices of appeal to the Supreme Court were filed, until final disposition or termination of such appeal or appeals; and providing that during the said period or periods the judgment for interlocutory injunction should continue in full force and effect.

It further appearing, That within the said 60 days period notices of appeal were filed in the Supreme Court of the United States and were thereafter docketed as Nos. 143, 159, and 576, October Term, 1965, now pending.

It further appearing, That the aforesaid orders of the Commission thus did not become effective as made and that these orders have at all times been and still are under continuous restraint.

It further appearing, That by an agreement dated September 29, 1965, the eastern railroad petitioners and western railroad petitioners as shown in revised appendices I and II to their petition filed on October 20, 1965, have agreed upon divisions of joint rates on freight traffic between points on the petitioning Eastern lines and points in mountain-Pacific territory to be applied in lieu of the divisions prescribed by the said orders of the Commission.

And it further appearing, That an agreement was made on November 19, 1965, by and between the Chicago & Eastern Illinois Railroad Company and the mountain-Pacific railroads as to the divisions of joint rates on transcontinental traffic involving the participation of the Chicago & Eastern Illinois Railroad Company and, accordingly, the latter railroad has withdrawn its opposition to the granting of the relief here sought.

Upon consideration of the record in the above entitled proceedings and of a petition filed on October 20, 1965, for leave to file under Rule 1.101(e) of the General Rules of Practice a joint petition attached to said petition by the eastern railroad petitioners named in revised appendix I and by western railroad petitioners named in revised appendix II seeking a partial vacation of the said orders of March 21, 1963, and December 31, 1963, and of the replies thereto, the supplemental statements filed in connection therewith, the withdrawal of opposition to the said petition by the Chicago & Eastern Illinois Railroad Company by its telegram dated November 20, 1965, and the letter dated November 22, 1965, by the petitioners consenting to the deletion of item (b) of the exceptions to the prayer of the said joint petition, and for good cause appearing:

It is ordered, That the petition for leave to file said petition be, and it is hereby, granted; and upon consideration of said petition for partial vacation of the outstanding

orders herein, said petition be, and it is hereby, granted, therefore:

It is further ordered, That the orders of March 21, 1963 (as clarified by order of June 20, 1963), and December 31, 1963, insofar as those orders prescribe primary divisions of joint all rail interstate rates for the transportation of property between points in official (or eastern) territory, on the one hand, and on the other, points in mountain-Pacific territory, as provided in appendices B and B-1 to the said reports of the Commission accompanying said orders to the extent that such joint rates apply from and to points on the lines of the petitioning eastern railroads named in revised appendix I and in addition the Chicago & Eastern Illinois Railroad Company, and points on the lines of petitioning western railroads named in revised appendix II, except (1) insofar as said orders prescribe divisions of joint rates (a) to or from stations in mountain-Pacific territory on the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and (b) to or from stations on western and southern railroads in Group E-5 as defined in said reports, and (2) insofar as said orders prescribe in appendices B and B-1 of said reports primary divisions of joint interterritorial rates on traffic moving between official and transcontinental territories from which prescribed western primary divisions the subdivisions thereof accruing to the midwestern lines are determined as provided in appendices C(d) and C-1(d) of said reports, be, and they are hereby, vacated.

And it is further ordered, That in all other respects the said orders as modified shall remain unchanged until further order of the Commission.

By the Commission.

H. NEIL GARSON
Secretary

(SEAL)

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